

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

Dustin Cooper v. Nethanjah Breitenbach

Cooper · No. 3:25-cv-00768-ART-CLB · Decided January 7, 2026

OPINION

1 2 UNITED STATES DISTRICT COURT 3 DISTRICT OF NEVADA 4 DUSTIN COOPER,
Case No. 3:25-cv-00768-ART-CLB 5 Petitioner, SCREENING ORDER 6 v. 7 NETHANJAH
BREITENBACH, 8 Respondent. 9 Pro se Petitioner Dustin Cooper has filed a Petition for Writ
of Habeas 10 Corpus under 28 U.S.C. § 2254, an application for leave to proceed in forma 11
pauperis (“IFP”), and a Financial Certificate.

(ECF No. 1-1 (“Petition”), 1 (“IFP 12 Application”), 4.) This Court finds good cause exists to
grant Cooper’s IFP 13 application. As such, this matter comes before this Court for initial review
of the 14 Petition under the Rules Governing Section 2254 Cases (“Habeas Rules”).

For the 15 reasons discussed below, this Court directs service of the Petition and sua sponte 16
raises the issue of counsel. 17 I. BACKGROUND 18 Cooper challenges a conviction and
sentence imposed by the Third Judicial 19 District Court for Lyon County (“state court”). A jury
found Cooper guilty of first- 20 degree murder with the use of a deadly weapon for the death of
his wife.

Cooper 21 was sentenced to life with the possibility of parole after 20 years for the first- 22 23 1
The state corrections department’s inmate locator page shows that Cooper is 24 incarcerated at
Lovelock Correctional Center. Nethanjah Breitenbach is the current warden for that facility.

Accordingly, at the end of this Order, this Court 25 kindly requests the Clerk of Court to substitute
Nethanjah Breitenbach for Respondent State of Nevada. See Fed. R. Civ. P. 25(d). 26 2 This Court
takes judicial notice of the online docket records of the Nevada 27 appellate courts
(<http://caseinfo.nvsupremecourt.us/public/caseSearch.do>). Notably, the Third Judicial District
Court for Lyon County does not have online 28 docket records.

1 degree murder conviction plus 60 to 240 months for the deadly weapon 2 enhancement. Cooper
appealed, and the Nevada Supreme Court affirmed on 3 December 19, 2019. Dustin Cooper v.
State of Nevada, No. 76782. 4 Cooper filed a state habeas petition on March 27, 2020. Cooper’s
counsel 5 then filed a supplemental petition. An evidentiary hearing was held on June 2, 6 2023,
and the state court denied Cooper postconviction relief on February 8, 7 2024.

Cooper appealed, and the Nevada Supreme Court affirmed on June 17, 8 2025. Dustin Broc
Cooper v. William Gittere, No. 88240. Remittitur issued on July 9 8, 2025. 10 II. DISCUSSION
11 Habeas Rule 4 requires the assigned judge to examine the habeas petition 12 and order a

response unless it “plainly appears” that the petition is not entitled to relief. See *Valdez v. Montgomery*, 918 F.3d 687, 693 (9th Cir.

2019). This rule allows courts to screen and dismiss petitions that are patently frivolous, vague, conclusory, palpably incredible, false, or plagued by procedural defects. *Boyd v. Thompson*, 147 F.3d 1124, 1128 (9th Cir. 1998); *Hendricks v. Vasquez*, 908 F.2d 1749, 491 (9th Cir. 1990) (collecting cases). This Court finds that a response is warranted in the instant case.

Further, it appears that counsel may be helpful in this case. The Criminal Justice Act authorizes the court to appoint counsel “when the interests of justice so require.” 18 U.S.C. § 3006A(a)(2). Although this Court finds that the appointment of counsel is in the interests of justice given the apparent complexities of this case and Cooper’s lengthy sentence, this Court is cognizant of the fact that Cooper has not moved for the appointment of counsel.

As such, this Court gives Cooper until January 30, 2026, to file a motion for the appointment of counsel. If Cooper does not file such a motion or otherwise indicates that he does not wish for counsel to be appointed, this Court will not appoint counsel and will issue a scheduling order on the Petition. 1 || INI. CONCLUSION 2 It is therefore kindly ordered that the Clerk of Court (1) substitute 3 || Nethanjah Breitenbach for Respondent State of Nevada, (2) file the Petition (ECF 4 || No. 1-1), (8) add Aaron Ford, Attorney General of the State of Nevada, as counsel 5 || for Respondents, and (4) electronically provide Respondents’ counsel a copy of 6 || the Petition (ECF No. 1-1), this Order, and all other items previously filed in this 7 || case by regenerating the Notices of Electronic Filing.

8 It is further ordered that Respondents’ counsel enter a notice of appearance 9 || within 21 days of entry of this Order, but no further response will be required 10 || until further order. 11 It is further ordered that Cooper has until January 30, 2026, to file a 12 || motion for the appointment of counsel if he desires that counsel be appointed to 13 || represent him.

14 DATED THIS 7th day of January 2026. 15 16 een Apes Wowtad 18 UNITED STATES DISTRICT JUDGE 19 20 21 22 23 24 25 26 27 28